U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAY 0 8 2015 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before us on motion to reopen and reconsider. We will grant the motion to reopen, dismiss the motion to reconsider, and affirm the denial of the petition.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a special education teacher for . He began teaching at in 2007. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. We dismissed the petitioner's appeal on November 18, 2014. A fuller discussion of the underlying issues appears in our appellate decision.

On motion, the petitioner submits a brief and additional evidence.

In re New York State Dep't of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that he seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on June 10, 2013. In an accompanying statement, the petitioner provided details about his past teaching career and addressed the three prongs of the *NYSDOT* national interest analysis. The director found that the petitioner's employment as a special education teacher was in an area of substantial intrinsic merit, but that the benefits of the petitioner's work were not national in scope. In addition, the director determined that the petitioner's past achievements did not serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. We upheld the director's findings on appeal.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions or legal citation to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. *See Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

A motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the "additional legal arguments" that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Id.* Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

On motion, the petitioner states that he "has the power to deliver benefits of national interest" and that "his efforts are not limited to [redacted] but have reverberated nationally." The petitioner, however, has not shown the benefits of his impact as a teacher beyond his own students and, therefore, that his proposed benefits as a special educator are national in scope. *NYSDOT* provides examples of employment where the benefits would not be national in scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. *NYSDOT* specifically identifies a schoolteacher as an example of a meritorious occupation that lacks national scope. The petitioner does not address this finding in the precedent decision, stating instead that "If I am able to do it in [redacted] where academic challenges are evident, I could do the best of my performance anywhere in the U.S. as well." The petitioner, however, has not submitted any documentary evidence showing that the impact of his work as a special education teacher extends beyond the students at his school. General assertions about the benefit of nationwide improvements in test scores do not establish individual eligibility without evidence that the petitioner, individually, is responsible for those improvements at a national level.

Regarding the reference letters submitted in support of the petition, our appellate decision dated November 18, 2014, stated:

> The petitioner submitted several letters from individuals who worked with him in the Philippines or at [redacted]. These individuals attested to the petitioner's talent, dedication, and contributions to his employers and community, but they did not indicate that the petitioner has had the wider impact and influence necessary to qualify for the national interest waiver under *NYSDOT*.

On motion, the petitioner mentions a letter dated May 20, 2013, from Assistant Principal, who states:

> As the performance evaluator, [the petitioner] has demonstrated evident rigor in his instructions, actual differentiation of activities suited to specific levels of his students, and effective classroom management – contributing to students' increasing achievement.
>
> The petitioner's multi-roles therefore are indispensable, knowing about his skills and abilities through which society can generally maximize favorable outputs to the benefit of our students in particular and the educational sector in general.

Mr. comments on the petitioner's effectiveness as an educator, but does not provide specific examples of how the petitioner's influence as a special education teacher is national in scope. In addition, Mr. states that the petitioner has performed in multiple roles at the school and that the petitioner's skills and abilities as an educator can improve student performance. Any assertion that the petitioner possesses useful skills, or a "unique background" relates to whether similarly-trained workers are available in the United States and is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *NYSDOT* at 221.

The petitioner also mentions a letter from , Principal , dated April 24, 2013. Ms. states:

> [The petitioner] is a dually certified and highly qualified instructor, holding certifications in both math and special education. . . . Dual certification is required in any secondary setting and teachers with the petitioner's combination and ability are rare and often hard to find. His exit from our building would certainly have a major impact on our service to students with disabilities.

Ms. asserts that the petitioner "is a dually certified and highly qualified instructor," but any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for labor certification. *NYSDOT* at 220-221. In addition, Ms. mentions that the petitioner's teaching qualifications "are rare and often hard to find." A shortage of special education or mathematics teachers does not necessarily demonstrate eligibility for the national interest waiver, because the labor certification process is already in place to address shortages of qualified workers. *See NYSDOT* at 218. Ms. also states that her school's loss of the petitioner "would certainly have a major impact on our service to students with disabilities," but she does not indicate that the petitioner's work has had, or will continue to have, an impact beyond .

The petitioner asserts that his website, , "has the power to deliver benefits of national interest." In an earlier letter dated June 14, 2013, the petitioner described his website, stating: "I have my own educational website, , which I created and designed for educational sourcing purposes as my reach-out." The petitioner further stated:

> [The website] is a stop-by for educators who want to browse or download educational resources, such as educational ideas, lesson plans and classroom activities. With the skills I have in writing and communication, and knowledge of technical and technology management and website content . . . , the benefit of promoting and communicating will be greatly emphasized for the well-being of the people of the United States.

Our appellate decision addressed the petitioner's development of the website, stating:

> The petitioner has presented as a general resource for teachers and students, which can produce national-level benefits. The petitioner stated that the web site "is a stop-by for educators who want to browse or download educational resources, such as educational ideas, lesson plans and classroom activities," but he did not show that his website includes any such content.
>
> The petitioner has submitted only a partial printout of the website's home page, consisting primarily of an essay entitled ' ' The evidence submitted, therefore, does not show that the petitioner has ever run a fully operational website for a national audience, or that running such a website would be part of his employment with

The petitioner's motion to reconsider is not supported by any pertinent precedent decisions or legal citations that demonstrate our latest decision was based on an incorrect application of law or USCIS policy. In addition, the motion does not establish that our appellate decision was incorrect based on the evidence of record at the time of the decision. Accordingly, the motion to reconsider is dismissed.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110.

On motion, the petitioner submits content printed from and describes the website's latest online educational resources. With regard to the submitted content, the " ' section has seven articles from November 2014-December 2014, the " ' section has nine articles from September 2009-November 2014, the ' ' section has five articles from November 2014, and the " section has ten articles from November 2014. In addition, the petitioner submits copies of three ' ' articles entitled ' ' (August 2, 2010), " ' (April 8, 2011), and ' ' (November 15, 2014). The submitted documentation reflects that the aforementioned three articles received 5,456; 6,110; and 4,622 "Post Views," respectively.

Although the "Post Views" reflect the number of website visitors who accessed the petitioner's articles, they do not establish that the benefit to special education from the website has been, or will be, national in scope. The petitioner submitted no evidence that the website views were by discrete visitors to the site or that they were not self-generated. There is no evidence showing that the petitioner's articles are frequently cited by educational scholars or that his work has otherwise influenced the field as a whole. Moreover, the petitioner has not demonstrated that the numbers of views reflect significant national traffic from educators from the dates the articles were posted through 2014.

Regarding the online content submitted from , all but five articles are dated after the filing of the Form I-140 petition on June 10, 2013. An "Announcement" posted on the petitioner's website states: "On November 15, 2014, as a website has undergone changes since its existence in " Eligibility, however, must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). That decision further provides. citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, we cannot consider articles written after June 10, 2013, as evidence to establish the petitioner's eligibility at the time of filing. Regardless, there is no documentary evidence showing that any of the petitioner's articles have affected the field of special education as a whole.

Previously, in response to the director's request for evidence, the petitioner submitted a proposal for " " With regard to the petitioner's proposal, our appellate decision stated:

> The petitioner did not claim that this foundation already exists. Rather, he describes the foundation's future activities, while acknowledging that the project now exists only as a proposal, and would take approximately three years to implement. The petitioner did not claim to have any prior experience in creating or running a foundation of the kind that he described in response to the request for evidence. Therefore, the record provides no basis for us to conclude that the newly proposed venture would succeed.
>
> Furthermore, the petitioner's initial submission included no mention of this program at all. Rather, he based his waiver application on the assertion that he would work as a special education teacher for The petitioner submits no evidence that the foundation would be an outgrowth of his work for or that is even aware of this new proposal.

On motion, the petitioner states:

> In the current year, Petitioner has reached out to Dr. , Executive Director of the Special Education Department in regarding his proposal

> which includes benefits to the life-skills High School students and teacher, which includes training teachers as well as program implementation and other parameters that are currently being worked out in their initial stage. Further, Petitioner has made his proposed benefit and details contained available for consideration. Dr. showed her interest in the Petitioner's proposal and has scheduled a meeting with [the petitioner] . . . in January 2015 to discuss the proposal further.

The petitioner submits a December 8, 2014, e-mail message that he wrote to Ms. informing her of his proposal, but there is no evidence of Ms. response. In addition, the petitioner submits online content printed from that states: ' is to be formalized into a foundation. Based on the proposal, the whole program will take three years from conception to evaluation. as a website will implement the proposed modules for Life Skills for teachers' training and education." The petitioner also submits a " ' dated December 9, 2014.

The petitioner has not shown that or any other school system has expressed any intention to implement the aforementioned proposal. In addition, the proposal post-dates the Form I-140 petition's filing date of June 10, 2013. As previously stated, eligibility must be established at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. As the foundation apparently did not exist even as a proposal when the petitioner filed the Form I-140 petition on June 10, 2013, the petitioner's subsequent development of the proposal cannot retroactively qualify him for that earlier priority date. Regardless, there is no evidence showing that the components of the program and its modules have had a national impact or influenced the field of special education as a whole.

The motion to reopen does not include any new facts or other documentary evidence to overcome the grounds underlying our previous findings. The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the individual must have "a past history of demonstrable achievement with some degree of influence on the field as a whole").

A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

Although the new evidence submitted by the petitioner provided a basis for granting the motion to reopen under 8 C.F.R. § 103.5(a)(2), the submitted documentation does not overcome the grounds

underlying our previous decision. Furthermore, as the petitioner's motion to reconsider is not supported by any pertinent precedent decisions or legal citations that demonstrate our latest decision was based on an incorrect application of law or USCIS policy, the motion to reconsider is dismissed.

We will affirm our prior decision for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The motion to reconsider is dismissed, the motion to reopen is granted, our decision of November 28, 2014, is affirmed, and the petition remains denied.